IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5602 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUSHALBHAI JIVABHAI ROHIT

Versus

DISTRICT SUPDT OF POLICE

Appearance:

1. Special Civil Application No. 5602 of 1990

MR SAURABH MEHTA for MR YN OZA for Petitioner No. 1

MR DA BAMBHANIA for Respondent No. 1

MR MA BUKHARI, AGP for Respondent No. 1,2-3

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2003

ORAL JUDGEMENT

The petitioner has challenged the order of

discharge dated 25/26th of July, 1988 passed by the respondent No.1. The petitioner was discharged from the service only on the ground that he was absent during the period from 14-11-1988 to 3-12-1988.

2) It is the case of the petitioner that he was sick on 9-11-1988 and hence he could not produce a medical certificate etc. However, on 3-12-1988, when he has made an attempt to resume his duties, he was not allowed to resume the duty and thereafter, the order of termination was passed on 25/26th July, 1988.

3) Being aggrieved by this order, the petitioner has made the representation dated 28-7-1989 to the Director General of Police. The said representation was not decided by him. The petitioner has also made the representation to the Chief Minister and reply dated 9-1-1990 was received by the petitioner stating that his representation was sent to the Additional Chief Secretary, Home Department and even after five months period the petitioner has not received any communication either from the office of the Home Department or from any other office. The petitioner has further received letter from Police Sub Inspector Head Quarter, Kheda, wherein also it was stated that the amount of deposit be taken from the office by the petitioner. However, no representation was decided by the respondent-authorities.

4) The petitioner has challenged the order mainly on the ground that the impugned order of discharge was not simpliciter but was a penal order because the said order was passed on the ground that the petitioner was absent unauthorisedly from 14-11-1988 to 9-12-1988. The petitioner, therefore, submitted that the respondents should not have put an end to the services of the petitioner, without holding departmental inquiry. And therefore, impugned order of discharge was deserved to be quashed and set aside by declaring it as violative of Article 311 of the Constitution of India. The petitioner has further submitted that he remained absent for 25 days and even then the punishment of discharge from the service was imposed on him, which is nothing but the economic death and is absolutely disproportionate and therefore, it deserved to be quashed and set aside. In support of his submissions, the petitioner has relied on the decision of this Court in the case of Sardarsingh Devisingh V.District Superintendent of Police, Sabarkantha & Others reported in 1985 G.L.H. 940, wherein it was held that unauthorised absence from the duty even for 150 days would not said to be an offence which would warrant the punishment of economic death.

Therefore, it was submitted that the order of dismissal should be quashed and set aside.

5) An affidavit in reply was filed by the District Superintendent of Police, wherein it was stated that the petitioner was selected for being recruited to the post of Unarmed Police Constable and when he was sent for requisite training he had remained absent without giving any prior intimation and hence the order of discharge was passed. It was further stated that no intimation was given with regard to the petitioners' illness and no medical certificate was produced in this behalf. It was further stated that the petitioner was not given regular appointment as a Police Constable but he was to undergo necessary training for being appointed to the post of Unarmed Police Constable. Till a person gets complete training for being appointed to the post of Unarmed Police Constable, the concerned person is not given regular posting and appointment as a Police Constable. In this view of the matter, it was contended in the affidavit in reply that the petitioner did not deserve any relief from this Court.

6) Heard Mr.Saurabh Mehta, learned advocate appearing for Mr.Y.N.Oza, learned Senior advocate for the petitioner and Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for the respondents.

7) After having heard and gone through the pleadings made in the petition, as well as, in the affidavit in reply, I am of the view that the punishment of discharge appeared to be quite disproportionate to the misconduct committed by the petitioner. However, since the petitioner was only a trainee and the training period was not successfully completed by him and he was discharged from service on the basis of Government circular applicable to the Disciplined Forces and more than 13 years have gone by now, it is not appropriate for this Court to pass straightway an order allowing the petition. It is especially so, when the representation was made by the petitioner and it is pending before the authorities. Mr.Mehta's submission is that the petitioner is ready and willing to accept the fresh appointment even today, without claiming any benefit of backwages or continuity of service etc. In this regard, Mr.Bukhari, learned AGP submits that necessary directions may be issued to the respondent authority to decide the said representation, which was made on 28-7-1989 and take the sympathetic view in the matter. Considering the proposal made before this Court during the course of argument and having regard to the facts and circumstances of the case, though I am not

interfering in the order passed by the respondent No.1, I direct the respondent authority to consider the representation made by the petitioner on 28-7-1989 and pass appropriate order after hearing the petitioner in the matter. While considering the said representation, respondent authority shall take sympathetic view in the matter. The misconduct alleged to have been committed by the petitioner is not so serious as would entail the severe punishment of discharge from service. The said representation dated 28-7-1989 shall be decided as early as possible, preferably within three months from the date of receipt of the writ of this Court or receipt of certified copy of the order, whichever is earlier. If the representation dated 28-7-1989 is not available then the petitioner is permitted to make a fresh representation along with which the copy of the original representation dated 28-7-1989 may be sent.

8) Subject to the above observations, this petition is disposed of. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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